

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into
Implementation of Assembly Bill 970 Regarding
the Identification of Electric Transmission and
Distribution Constraints, and Related Matters
Affecting the Reliability of Electric Supply.

Investigation 00-11-001
(Filed November 2, 2000)

**ADMINISTRATIVE LAW JUDGE'S RULING
APPROVING NONDISCLOSURE AND PROTECTIVE AGREEMENT**

This ruling approves the text of a Nondisclosure and Protective Agreement (Agreement) designed for use during this proceeding to protect the confidential material produced in discovery by the California Independent System Operator (CAISO). The final version of the Agreement, attached hereto as Attachment 1, is reasonable for the purposes proposed by the parties.

Therefore, **IT IS RULED** that all Receiving Parties in this proceeding (as that term is defined in the Agreement) shall, if they wish to receive the CAISO's Protected Materials (a term also defined in the Protective Order) be bound by the Agreement and sign the Nondisclosure Certificate accompanying the Agreement.

Dated June 28, 2004, at San Francisco, California.

/s/ SARAH R. THOMAS

Sarah R. Thomas
Administrative Law Judge

ATTACHMENT 1

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into
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Distribution Constraints, Actions to Resolve those
Constraints, and Related Matters Affecting the
Reliability of Electric Supply

Investigation 00-11-001

NONDISCLOSURE AND PROTECTIVE AGREEMENT

This Nondisclosure and Protective Agreement (“Agreement”) is effective this ____ day of _____, 2004, by and between the California Independent System Operator and its counsel of record, and _____ (“_____”) and its counsel of record.

WHEREAS, certain information or workpapers that may be requested to be produced or disclosed in Phase 5 of Investigation 00-11-001 (the “Proceeding”) may constitute trade secrets, proprietary and confidential information, or competitively sensitive documents (the “PROTECTED MATERIALS”); and

WHEREAS, the parties hereto wish to streamline discovery and facilitate preparation of testimony in the Proceeding and avoid unnecessary law and motion practice; and

WHEREAS, the parties hereto believe that this Agreement will facilitate the evaluation of the CAISO’s opening testimony, facilitate discovery, protect legitimate proprietary or confidentiality concerns, and preserve the rights of the parties and those third-parties that possess rights in the PROTECTED MATERIALS;

ACCORDINGLY, the parties hereto agree that the following terms and conditions shall govern the use of such workpapers or information provided by the CAISO (the “Designating Party” or “CAISO”) to the other party (the “Receiving Party”) in the context of this Proceeding:

1. This Agreement shall govern all PROTECTED MATERIALS produced by the Designating Party and shall remain effective until the requirements of paragraph 5 below are satisfied.

2. The Designating Party may designate as PROTECTED MATERIALS those items provided through discovery, upon request, or otherwise which are treated by the Designating Party as confidential or proprietary, which are not available to the public, and which, if disclosed freely, would, in the Designating Party’s judgment, subject it to risk of competitive disadvantage or other business injury, including liability under a license or subscription agreement with third-parties.

3. For purposes of this Agreement:

a. The term “PROTECTED MATERIALS” includes (a) material provided by the CAISO in response to discovery requests or in compliance with Rule 74.1, et seq. of the Commission’s Rules of Practice and Procedure, and designated by the CAISO as protected, including, but not limited to the TPS Database information, WECC proprietary data, and WECC Data Module from Henwood Energy Services, Inc.; (b) any copy or reproduction of such designated materials; (c) any information contained in or obtained from such designated materials; (d) any other materials which are made subject to this Agreement by the Administrative Law Judge, by the Commission, by any court or other body having appropriate authority, or by agreement of the parties hereto; and (e) notes of

PROTECTED MATERIALS. Notwithstanding the above, Receiving Party shall not have breached any obligation under this Agreement if Protected Material is disclosed to a third party when the Protected Material: (1) was in the public domain at the time of such disclosure or is subsequently made available to the public consistent with the terms of this Agreement; (2) had been received by the Receiving Party at the time of disclosure through other means without restriction on its use, or had been independently developed by the Receiving Party as shown through documentation; or (3) is subsequently disclosed to the Receiving Party by a third party without restriction on use and without breach of any agreement or legal duty.

b. The term “notes of PROTECTED MATERIALS” means memoranda, handwritten notes, or any other form of information which copies or discloses materials described in the foregoing paragraph.

c. The term “Reviewing Representative” is a person described in paragraphs 8 and 9.

d. The term “Commission” means the California Public Utilities Commission.

4. PROTECTED MATERIALS shall be made available under the terms of this Agreement only to the Reviewing Representatives as provided in paragraphs 8 and 9.

5. PROTECTED MATERIALS shall remain available until the date that an order concluding or otherwise terminating this Proceeding is no longer subject to judicial review. Within 30 days after such date, all Reviewing Representatives of the Receiving Party shall return the PROTECTED MATERIALS, including all copies thereof, and notes of

PROTECTED MATERIALS to the Designating Party or shall destroy said materials. Within such time period the Receiving Party shall also submit to the Designating Party an affidavit stating that all PROTECTED MATERIALS, copies thereof, and notes of PROTECTED MATERIALS are being returned or have been destroyed by all Reviewing Representatives of the Receiving Party.

6. To the extent possible, each page of PROTECTED MATERIALS and each disk containing PROTECTED MATERIALS shall be physically marked "PROTECTED MATERIAL" or "Contains Privileged Information - DO NOT RELEASE" by the Designating Party. All PROTECTED MATERIALS shall be maintained by the Receiving Party in a secure manner. Access shall be limited to those Reviewing Representatives specifically authorized pursuant to paragraphs 8 and 9.

7. PROTECTED MATERIALS covered by this Agreement shall be treated as confidential by the Receiving Party and by the Reviewing Representative in accordance with the certificate executed pursuant to paragraph 9. PROTECTED MATERIALS shall not be intentionally used except as necessary for the conduct of this Proceeding; nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this Proceeding and who needs to know the information in order to carry out that person's responsibilities in this Proceeding. Reviewing Representatives may make notes of PROTECTED MATERIALS which notes must be maintained in a secure manner pursuant to paragraph 6.

8. A Reviewing Representative is an individual who is:

(i) An attorney who has made an appearance in this Proceeding for a Receiving Party;

(ii) Attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in (i);

(iii) An expert or an employee of an expert retained by Receiving Party for the purpose of advising, preparing for, or testifying in this Proceeding; and

(iv) An employee of a Receiving Party who has a role in advising, preparing for, or testifying in this Proceeding.

9. a. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to the PROTECTED MATERIALS pursuant to this Agreement unless that Reviewing Representative has first executed, and there has been delivered to the Designating Party, a non-disclosure certificate in the form set forth in Appendix 1.

b. Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their employment, instruction, supervision or control comply with this Agreement.

10. Any Reviewing Representative may disclose PROTECTED MATERIALS to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative have both executed and delivered a non-disclosure certificate to the Designating Party. In the event that any Reviewing Representative to whom the PROTECTED MATERIALS are disclosed ceases to be engaged in these Proceedings, or is employed or retained for a position whereby that person is no longer qualified to be a Reviewing

Representative under paragraph 8, access to PROTECTED MATERIALS by that person shall be terminated and that person must comply with the return/destruction requirements in paragraph 5. However, even if no longer engaged in this Proceeding, every person who has agreed to a non-disclosure certification shall continue to be bound by the provisions of this Agreement and the certification.

11. If the Receiving Party intends to submit or use in this Proceeding any PROTECTED MATERIALS in any written submission, including, without limitation, testimony, briefs, motions, comments, or protests, the Receiving Party shall submit two versions of such document: a full version under seal to the extent filed with the Commission or served on REVIEWING REPRESENTATIVES, labeled “CONTAINS PROTECTED MATERIALS – FOR REVIEWING REPRESENTATIVES ONLY” and a public version served on all other parties with PROTECTED MATERIALS redacted. If the Receiving Party intends to use in this Proceeding any PROTECTED MATERIALS such that the use would result in a public disclosure of those PROTECTED MATERIALS, including, without limitation, through cross-examination or other oral presentations before the Commission, the attorney for the Receiving Party shall contact the attorney for the Designating Party as soon as possible prior to such use, and counsel shall constructively explore means of identifying the PROTECTED MATERIAL so that the confidentiality thereof may be reasonably protected (including, but not limited to, clearing the hearing room during examination, discussion, or argument concerning the PROTECTED MATERIAL), while at the same time enabling an effective presentation. If the Designating Party and the Receiving Party are unable

to agree upon a procedure to protect the confidentiality of the PROTECTED MATERIAL or if the Receiving Party asserts the PROTECTED MATERIALS should not be filed under seal, the Receiving Party shall request a ruling from the presiding Administrative Law Judge; the Designating Party reserves the right to oppose the Receiving Party's request. Except as expressly provided for herein, no use can be made of the PROTECTED MATERIAL that would fail to protect its confidentiality without such a ruling from the presiding Administrative Law Judge.

12. The presiding Administrative Law Judge retains the discretion to review and evaluate the facts and circumstances involved in any proposed use of PROTECTED MATERIAL in Commission hearings, and the flexibility to respond in whatever manner is most appropriate under the circumstances, including the holding of in camera hearings.

13. Nothing in this Agreement shall be construed as precluding any party from objecting to the use of PROTECTED MATERIALS on any legal grounds.

14. Nothing in this Agreement shall preclude any party from requesting the presiding Administrative Law Judge, the Commission or any other body having appropriate authority to find that this Agreement should not apply to all or any part of any materials previously designated as PROTECTED MATERIALS pursuant to this Agreement.

15. The presiding Administrative Law Judge shall resolve any disputes arising under this Agreement or refer such dispute to the Administrative Law Judge designated by the Commission to resolve law and motion matters. Prior to presenting any dispute under this Agreement to the presiding Administrative Law Judge or law and motion

Administrative Law Judge, the parties to the dispute shall use their best efforts to resolve it. Any objection to the designation of PROTECTED MATERIALS or motion to compel, and any response to the objection or motion to compel shall be filed in writing with the presiding Administrative Law Judge or law and motion Administrative Law Judge, and shall be delivered to the opposing party's counsel(s) of record within 24 hours of filing unless otherwise ordered by the presiding Administrative Law Judge or law and motion Administrative Law Judge. In any challenge to the designation of materials as PROTECTED MATERIALS, the burden of proof shall be on the Designating Party.

16. To the extent that PROTECTED MATERIALS are discussed, analyzed or otherwise the subject of consideration during any conference or other session held in connection with the Proceeding, only Reviewing Representatives of any party may be present for such sessions.

17. The Receiving Party agrees that any release or attempted release of the PROTECTED MATERIALS or use of such materials other than as contemplated by this Agreement by a Receiving Party may cause Designating Party irreparable injury which could not be adequately compensated through pecuniary damages. Accordingly, the parties agree that any breach or threatened breach of this Agreement may be enjoined.

18. This Agreement shall be governed and construed according to the laws of the State of California.

19. This Agreement sets forth the complete understanding of the parties hereto with respect to the subject matter hereof as of the date first above set forth and supersedes any prior understandings, discussions, or course of conduct (oral and written). Any modification or waiver of the

provisions hereof must be written, executed by both parties, and shall not be implied by any usage of trade or course of conduct.

20. Nothing in this Agreement shall be deemed to preclude any party from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this Proceeding under this Agreement.

21. This Agreement may be executed in separate counterparts by each party, each of which shall be fully effective as to the party executing it.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the date entered below.

Dated:_____

By:_____

Grant A. Rosenblum

Attorney for:

THE CALIFORNIA INDEPENDENT
SYSTEM OPERATOR

Dated:_____

By:_____

Attorney for:

APPENDIX 1

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Investigation 00-11-001

NONDISCLOSURE CERTIFICATE

I certify my understanding that access to PROTECTED MATERIALS is provided to me pursuant to the terms and restrictions of the Nondisclosure and Protective Agreement (“Agreement”), concerning the above-captioned proceeding. I have been given a copy of and have read that Agreement and agree to be bound by it. I understand that the contents of the PROTECTED MATERIALS, any notes or other memoranda or any other form of information which copy or disclose PROTECTED MATERIALS shall not be disclosed to anyone other than in accordance with the Agreement and shall not be intentionally used for any purpose other than participation in the above-captioned proceeding before the California Public Utilities Commission. I agree that my obligation to honor the confidentiality of the PROTECTED MATERIALS shall continue after the issuance of the final, non-appealable order disposing of the merits of Phase 5 of Investigation 00-11-001 as set forth in the Agreement. I acknowledge that a violation of this certificate constitutes a violation of an order of the Commission.

By: _____
Printed Name: _____
Title: _____
Representing: _____
Address: _____
Date: _____

(End of Attachment 1)

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Approving Nondisclosure and Protective Agreement on all parties of record in this proceeding or their attorneys of record.

Dated June 28, 2004, at San Francisco, California.

/s/ ELIZABETH LEWIS

Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.